

Ron Dingel
RT#2 Box 426-C
Wewoka, OK 74884
1-3-97

FEDERAL
ADMINISTRATION

DOCKET CLERK 97

I AM WRITING ^{88 JAN 10 P. 1:43} YOU REGARDING THE NEW HOURS OF SERVICE
Rules Being Considered. I AM 54 YEARS OLD, BEEN DRIVING
18 WHEELER 5 YEARS. NO ACCIDENTS. NO TICKETS.

I BELIEVE MOST TRUCK DRIVERS CAN EASILY DRIVE 10-
12 HRS A DAY IF WELL RESTED AND GOOD WEATHER. THERE
ARE DAYS I BELIEVE I COULD DRIVE 14 HRS. BUT DURING
BAD WEATHER, SOMETIMES I DON'T MAKE 10 HRS.

THERE IS ONE INSTANCE WHERE I DO GET VERY TIRED
BUT MUST KEEP DRIVING. I WOULD LIKE TO SEE SOME RELIEF
HERE. FOR EXAMPLE: IF I SLEPT 10PM TO 6AM THE NIGHT
BEFORE AND AM NOW AT RECEIVER WAITING TO UNLOAD. I
GET UNLOADED BY 9AM. NOW I WAIT FOR CARRIER TO
SEND ME NEW RELOAD INFO. AT 5PM CARRIER SENDS ME
10 MILES TO GET RELOADED. I HAVE HAD 8HR BREAK
9AM TO 5PM SO CAN NOW DRIVE 10 HOURS. BUT BECAUSE I
SLEPT WELL LAST NITE I WASNT SLEEPY ^{DURING} ~~OVER~~ DAY AND
HAD TO STAY AWAKE FOR NOW RELOAD INFO. I AM NOW
RELOADED BY 7PM. CARRIER HAS SET AN APPT 8AM
TOMORROW MORNING 450 MILES AWAY. I CAN LEGALLY
MAKE THIS RUN BUT WILL BE VERY FATIGUED DRIVING
OVERNIGHT. NOW A CARRIER WILL USUALLY HAVE
PRINTED MATERIAL STATING THE DRIVER DONT HAVE TO
RUN IF FATIGUED. DONT YOU BELIEVE IT. I HAVE
TRIED THIS WITH CARRIERS. DISPATCH WILL INFORM
DRIVER HE HAD AN 8TH BREAK DURING DAY
AND MUST TAKE LOAD AND DELIVER ON TIME.

QA-21433

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I HAVE ARGUED WITH DISPATCH STATING I NEVER SLEPT DURING DAY. THEIR ANSWER: IF DRIVER DONT DELIVER ON TIME HE WILL BE CHARGED AS DELIVERING LATE. TO THE PUBLIC THAT MAY NOT SOUND SO BAD BUT TO THE DRIVER IT HAS BIG EFFECTS. THE DRIVER CAN LOSE HIS BONUS (\$400-500) FOR LATE DELIVERY. OR AS HAPPENED SEVERAL YEARS AGO TO ME. DISPATCH LET ME SET 5 DAYS WITHOUT A LOAD, WHILE AS HE PUT IT "I RESTED UP." THIS COST ME AT LEAST \$400. DISPATCH GETS DRIVER HOME FOR DAYS OFF AND MONEY MILES. I HAVE HAD DISPATCH FLEAM A PREVIOUS EMPLOY TELL ME I WILL RUN THE WAY THEY SAY OR THEY WILL MAKE IT SO HARD ON ME I WILL HAVE TO QUIT. I FINALLY LEARNED TO GO ALONG. THANKFULLY THERE ARE VERY FEW OVERTNITEES.

I AM NOT SURE HOW TO AVOID OVERTNITEES BUT IN THE EXAMPLE I GAVE EARLIER, I FEEL MY APPT SHOULD HAVE BEEN THE NEXT DAY AFTERNOON INSTEAD OF 8AM. IF I COULD HAVE STOPPED FOR 4-5 HRS DURING NITE I COULD EASILY MADE 1PM DELIVERY AND I FEEL SAFELY. BUT THIS IS ONCE A WEEK. MORE THAN THAT I WOULD GET FATIGUED AND UNSAFE.

Don King

Docket Clerk
Attn. FHWA Docket No. 96-28
FHWA
Room 4232
400 Seventh St., SW
Washington, DC 20590

LEGIS. REGS. DIV.

97
JAN 10 8:01

ADMINISTRATION

Following are comments of Kenneth Ruhl, Owner-Operator, concerning hours of service for truck drivers and other truck-related matters:

1. Allow 10 hours driving time **after** 8 hours off duty and do away with the 70 hours in **eight days** limit. Car drivers have no such limits on their operation of a motor vehicle.
2. The 70 hours driving limit in **8** days should be changed to no limit or to a restart after 24 hours off duty. There should be no weekly or eight day limit. Covering truck drivers under the Fair Labor Standards would eliminate many companies **from** requiring their drivers to work unreasonable schedules.
3. Bobtailing from terminal to motel, etc., should not be counted as on-duty time.
4. Waiting to load or unload and other such delays should not be counted toward on-duty time.
5. Rest areas should be required on all federal highways with adequate parking allowed for trucks. Many rest areas are not properly built for trucks, the parking for trucks is extremely limited, and some have limits on time trucks are allowed to park. Truck drivers have very few options for parking and resting considering the type of vehicle they drive. States who use federal funds for highway purposes should be required to provide adequate truck facilities.
6. NO FUEL FACILITIES SHOULD BE ALLOWED TO SELL ALCOHOLIC BEVERAGES!
7. Speed limits should be the same for both cars and trucks.

As a truck owner and driver, I would be very pleased to answer questions about my work or discuss these matters with interested individuals.

Sincerely,

Kenneth Ruhl

Kenneth Ruhl

Mr Kenneth Ruhl
RR 1 Box 1128
Quilin, MO 63961

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PAGE 1 OF 1

CLAYTON M. KAHABKA SR
4295 WILCOX ROAD
BROWN CITY, MI 48416

Docket Number MC 96-28,
Attention Office of the General Counsel,
FHWA,
400 Seventh Street, SW,
Washington, DC 20590

ADMINISTRATION
96 JAN 10 A8:00
LEGS./REGS. DIV.

December 21, 1996

Subject: HOURS OF SERVICE RULE MAKING

I am a 56 year old truck Owner/Operator. I have over 30 years experience as a professional driver and have driven about three million miles.

I would like to recommend the following thoughts for the rule makers to consider.

1. As individuals we are all different. Some of us are able to operate on far less rest than others. As a young man I was able to operate safely with only 4 hours of sleep at night. If I tried to sleep in the day time I required at least 6 hours. Now I require 6 hours of sleep every night to operate safely. I also will often stop for a 15 minute nap if I find myself getting drowsy. I find that a nap is much more effective than a stimulant such as coffee.

2. I think that the real problem that needs to be addressed is what the drivers are doing when they are not driving. If an individual logs a rest period and fails to rest they can not operate safely. It is my practice to sleep from 11:30 PM to 3:30 AM. I will take an 8 hour rest period that may start as early as 7:30 PM and end as late as 7:30 AM. The Driver needs to be able to sleep at about the same time every day. I also try to find a place to park my truck where I will not be disturbed. This takes some prior planing but it is worth it.

3. The 8 hr break after 10 hr driving or 15 hr on duty should be replaced with a 24 hr day rule. The new rule needs to have the driver sleeping at the same time every day. The new rule should not penalize the driver for logging time on duty not driving as the present system does. When ever a driver logs a full 24 hours off duty the log should zero out and start over.

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4. The 70 hr in 8 day or 60 hr in 7 day rule should be replaced with a rule that would give the driver a day off at home or a place of the drivers preference every 7 days, or passably 2 days every 14. The present system has drivers setting out of hours some place where they have nothing to do so they go looking for entertainment. The entertainment they find often renders them unfit for service when their log book shows hours available.

5. Enforcement personnel should be required to operate under the same rules as professional drivers. This includes all police officers and DOT officers that will enforce the rules.

6. The new rule should read something like this. No driver shall operate a vehicle more than 12 hrs or be on duty more than 16 hrs in a 24 hour period. Every driver will select a 4 hour period that will be a part of their 8 hour rest period every day. A driver must log 48 hours off duty before a change can be made in their selected 4 hour period. A driver must log a 24 hour off duty period after 6 days of on duty or 48 hours off duty after 12 days of on duty. The off duty days will be at the drivers domicile or a documented preselected location of the drivers choice.

7. To insure that drivers are able to stop and rest more parking area will have to be provided in many areas. If truck drivers can only operate 12 hours a day the trucks have to be parked 50% of the time. That requires a lot of parking area. A tired driver needs easy access to the parking area to. The parking areas needs to be planed by experienced drivers that understand what is required to park a truck. Also truck idle ban laws need to be abolished as a driver can not rest properly in a sleeper that is to cold or to hot.

Thankyou for considering my thoughts on this matter.

Sincer ly

Clayton M. Kahabka Sr.

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12/10/96

Federal Highway Administration
Department of Transportation
400 Seventh St., SW, Room 4232
Washington, D.C. 20590

RE: FHWA Docket No. MC-96-28
Proposed Changes in Hours of Service for Commercial Drivers

Greetings:

Having read the text of MC-96-28, I am using this opportunity to send in my comments on this matter. Having been a commercial driver for some time, I feel qualified to provide opinion on any proposed changes in the rules. It is my sincere hope that the FHWA will take these and any other comments provided by professional drivers under serious consideration, for we are the people that are ultimately affected by these rules. While I will not address all 37 concerns that face the FHWA in this matter, I wish to call attention to the following:

Shippers Responsibility

In many areas of the country, particularly in California produce sheds, it is not at all unusual for a driver to have to wait 10 or more hours to be loaded. The FHWA wishes to address this issue as one of how to record the time spent in the RODS. It is missing the larger point. A driver is not usually sleeping during this time, instead he or she is having to keep listening to their CB, waiting for the shipper to call them to the dock. If a driver misses their call, they are sent to the end of the line. This situation makes getting any meaningful sleep next to impossible, as the best a driver can hope for is a light nap while "keeping one ear open." This contributes greatly to fatigue, a serious safety concern.

In addition, although a driver is waiting for many hours to be loaded, the receiver still expects the load to be delivered at the original time scheduled by the dispatcher. No allowance is made for delay in loading. When the driver finally does get loaded and picks up all the paperwork that accompanies a shipment, he or she now must drive all night to make the appointment that was set by the dispatcher who is probably home in bed while the driver has to continue to drive. If the driver does not make the scheduled appointment, he or she will probably be held accountable for any late load charges, *although the driver had no control over the situation.*

Driver Pay

On this issue I would simply like to comment that given the total hours a driver has to work, he or she is woefully underpaid. While I do not mean to suggest a "driver's minimum," I would like to address the way some freight (particularly produce) is billed. It is common practice for farm produce (an exempt commodity) to pay by the hundredweight, or with onions, potatoes, and other items that can be bagged or boxed, by the bag or case. This is an open invitation for overloading. By eliminating this type of pay scale, and instead going to a flat rate that would be based on the current market value of the item being shipped, overloading would lose its incentive, and decrease sharply.

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Receivers responsibility

Forced unloading continues to be a major problem within the industry. Although regulations regarding this matter already exist, they are routinely flouted by receivers, particularly at the major grocery warehouses in this country. It is common for a grocery receiver, working under Union contract, to require a driver to unload, repalletize, restack, rewrap, or otherwise "fingerprint" a load consigned to the warehouse. If a driver refuses, he or she will often be ejected from the property, and the company for which he or she works will be called, probably resulting in driver termination. Often, a driver does have the "option" of hiring a lumper, for cash which may or may not be reimbursed in full or part by the company. This situation must stop! Requiring a driver to unload a trailer after driving it a great distance is simply unreasonable. The rule here should be clear and exact. *Shipper load, receiver unload, without cost or undue delay to the driver.*

Driving time

The rule as it now stands is sufficient. The problem many drivers run into is in the recap. At the end of a 24 hour period a driver must add in the hours from eight days prior, if on a 70/8 plan, or from seven days prior, if using the 60/7 plan. This is arcane, and often requires a driver to drive when they are sleepy, and sleep when they are awake. A motor carrier is said to be in compliance with the regulations as long as a driver has "hours available." As it now stands, this does not consider the individual drivers' situation. I do not have any specific suggestions regarding this issue, but it does need to be addressed. This, too is a major factor concerning driver fatigue. Drivers are not machines to be switched on and off at will. They are human, and as such require sleep at different intervals.

Penalties

Entirely too many penalties are being borne by the driver. If a shipper delays in loading, and the dispatcher refuses to reschedule the delivery time, and the driver has no real options in the matter (many do not, they are under something called "forced dispatch"), why does the driver have to bear all the responsibility for violations. By requiring shippers, receivers, and motor carriers to accept even partial responsibility, it would go a very long way toward eliminating stress in the drivers' workplace.

Parking

There are simply not enough places to park a commercial vehicle so that a driver can get their much-needed rest. Private truckstops fill fast, highway rest areas do not have adequate space, and many states will ticket a driver for parking on the shoulder of an entry ramp. Studies should continue into how best to rectify this situation, also a factor in driver fatigue.

Enforcement

While it may be beyond the scope of the FHWA to regulate individual state enforcement, I would like to call attention to the following: states have been, and continue to use the FMCSR as a means of revenue enhancement. By relying on sections of the FMCSR, particularly part 395, drivers' hours of service, states have been literally extorting money from drivers for minor infractions.

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While state's rights have become a major issue recently, it is my opinion that the fines for non-moving violations be set at the Federal level. A minor RODS violation that will cost a driver \$60 or so in Colorado, will cost that same driver almost \$1000 in California, and the driver will be charged with a misdemeanor as well. I personally have been fined large amounts of money for minor infractions. This situation simply breeds disrespect for the law, and all of its enforcement agencies.

The professional drivers of this country provide an essential service, under some of the worst conditions imaginable, so that we all can live comfortably. No driver is asking that these regulations be completely discarded. Instead, we ask that the FHWA take a close look at the modem trucking industry, and set rules that are both fair and effective. We are not a group of outlaws who view the nations' highways as our private playground. The professional drivers have done everything required of them by the FHWA, from drug testing to obtaining the CDL and beyond. We have proven our worth. We have the lowest drug-test positive rate of any industry. Serious accidents are down. Productivity is up. Rewrite these antiquated regulations that were outdated before the interstate system came into existence. It is the very least that can be done for the nations drivers.

Thank you for this opportunity,



Philip D' Amore
American Truck Driver

AL JESSEP CLA
100 W. Central Ave.
Amarillo, TX 79108
(806) 383-0154

December 30, 1996

FHWA Docket #MC-96-28
Federal Highway Administration
Dept. Of Transportation
400 Seventh St. S.W.
Room 4232
Washington, DC 20590

99
JAN 7 10:46
LEOS/REGS. DIV.
FEDERAL HIGHWAY
ADMINISTRATION

Dear sirs;

I would like to take this opportunity to include in the present rules changes sessions these comments concerning the almost malicious oversight by FHWA to submit written standards and procedures in its Code of Federal Regulations (CFR) regarding inspections, searches and investigations. Title 5 of the United States Code, the Administrative Procedures Act of 1946, permits an inspector broad, warrantless authorities, which are then expanded upon even further in Title 49 of the U.S. Code, the Transportation Act. Title 49, though, offers no authority for DOT or FHWA to make inspections without consent. Subsequently, a driver's rights under Title 5 could prevail during a roadside inspection as those rights have already been upheld in numerous related administrative cases wherein the inspecting agency lacked statutory authority to inspect without consent. By ignoring the obligations to state written standards and guidelines for agent inspectors to follow, especially those agent states working under MCSAP agreements, FHWA has unleashed a plethora of run-amuck inspectors wielding unbridled discretions during roadside inspections, and purports to authorize

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such inspections without consent or warrant repugnant to minimal constitutional and statutory safeguards.

COMMENT ON SUBPOENAS

Title 5, USC, Section 555(D) states:

(A)gency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law.... (emphasis added)

Title 49 (restated in CFR 386) authorizes FHWA, by authority of the Secretary of Transportation, to issue subpoenas and punish refusals to comply through the courts under 49 USC § 502(D) which states:

(T)he Secretary may subpoena witnesses and records related to a proceeding or investigation. . .to the designated place of the proceeding or investigation. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding or investigation . . .may petition the District Court....in which proceeding or investigation is conducted to enforce the subpoena.... (emphasis added)

Thusly, it may be argued with authority that, since FHWA has subpoena power inherent within the statutes, such subpoena is required to be produced on request by a party to the inspection.

According to the Attorney General's interpretation of the Administrative Procedures Act in The Attorney General's Manual on the Administrative Procedures Act, Tom C. Clarke, Attorney General, 1947, Page 67, Section 6(C) - Subpoenas:

"The subsection (6(C)) requires issuance of subpoenas to any party upon request and may be argued from the quoted language that agency subpoenas must be issued merely upon request of a party unless the agency requires, by its published procedural rules, a statement of general relevance and reasonable scope of the evidence sought. Accordingly, each agency which is empowered to issue subpoenas should issue rules of procedure

stating the manner in which parties are to request subpoenas and the contents of such requests....The standard of "general relevance and reasonable **scope**" should be interpreted and applied in the light of the statutory purpose of making administrative subpoenas equally available to private parties and agency representatives."

FHWA has failed to spell out in written standards its guidelines and procedures to be followed at roadside inspection sites by agent state inspectors operating under MCSAP agreements. Since state enforcement schemes must parallel those required of FHWA (unless differences are approved), DOT then certainly has jurisdiction to disapprove schemes that violate the federal stringency guidelines.

Some of the written standards lacked concern:

- (1) an objection, all or in part, to an investigation by a driver.
- (2) the contents of a written subpoena, notice, or their equivalents.
- (3) informing the party being inspected of the actual **authoritie(s)** under which; (A) the inspection is made, (B) the inspectors are guided.
- (4) the **remedie(s)** available to the inspector in the event of an objection. (i.e. motion to compel or injunctive procedure through the court).

An example of such a clearly-defined standard surrounding objections to an inspection can be found in OSHA (29 CFR § 1903.4).

A simple written notice of inspection required by FHWA to be handed out to a driver at a roadside inspection site would take on the character of a subpoena and solve most problems. A refusal by that driver then to honor that notice would subject that driver to prosecution of up to \$1000.00 a day, and could result in an

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injunction being handed down to him. This is the proper remedy for a driver refusal to show a logbook, for instance, not an (unconstitutional and downright unconscionable) out of service order.

COMMENT ON POSSESSORY INTEREST OF LOGBOOKS

The right of an agency to inspect business records customarily kept is often very protected by the courts. However, fourth and fifth amendment, self-incrimination defenses may be available where an individual is himself required to aid in the discovery, production, or authentication of incriminating evidence (such as the requirement imposed upon a driver to produce his/her logbook under 49 CFR § 395.9(K)(2) "available for inspection")

The answer can be found in the issue that surrounds the possessory interest claims of the party being inspected, and the evidence being sought.

The possessory interest of customarily-kept business records is generally custodial in nature, thusly, those records cannot be rightfully withheld from an inspector. In addition, courts have held that, in cases of custodial evidences sought, the mere verbal request of the inspector was subpoena enough.

However, courts have quickly taken a different approach to records that fall under the rules of constructive possession. To compel the production of such a constructive record, when such production could result in (a driver's) prosecution, courts have held is tantamount to compelling testimony. And when such compulsory production is ordered by an inspector (absent written standards and procedures directing conduct) as is done now by state

agents almost seemingly at the point of a gun, such conduct becomes repugnant to minimal constitutional safeguards.

In *BISWELL V U.S.*, 406 US 311, 32 L.Ed2 7, 92 S.Ct 1593 (1972), the court held that inspections "may proceed without a warrant (only) where specifically authorized by statute."

Treasury has such statute in its section 7342, Transportation lacks such statutory authority to make inspections absent warrant or consent. However, even in *BISWELL* (under Treasury 7342), the safeguards were still there for *BISWELL* when the court ruled that until the inspectors formally showed the defendant the law as it was written, *BISWELL* had a right to object to the search, and he was found not guilty of violating 7342, refusal to submit to an inspection.

In *GARNER V U.S.*, 47 L.Ed2 370, 424 US 648, 96 S.Ct 1178 (1976), the court stated (again, in Treasury): "The system is undermined when a government deliberately seeks to avoid the burdens of independent investigation by compelling self-incriminating disclosures!"

In *MARSHALL V BARLOW'S INC*, 435 US 307, 56 L.Ed2 305, 98 S.Ct 1816 (1978), the court held that inspections are satisfied when "reasonable legislative or administrative standards" are shown to be present.

An inspector demanding to review a driver's in-progress logbook is synonymous with an IRS agent demanding (without subpoena) a citizen's 1040 forms halfway through income tax season. The IRS, even with its ominous section 7342, cannot make that one stick. In *FISHER V U.S.* (48 L.Ed2 39, 425 US 391, 96 S.Ct 1569 (1976)), the court held that the fifth amendment applies "when

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the accused is compelled to make a testimonial communication that is incriminating." (48 L.Ed2 54).

As one can see, even in Treasury cases (which have statutory authority to make warrantless inspections without consent) despite 7342, the courts have protected the defendant under the rules of constructive possession. In those cases, such as OSHA, where no statutory authority exists without consent, the courts have held that the agency's injunctive powers are remedy enough. Such would be the result of any case involving FHWA versus a driver's refusal to show his logbook, in my opinion.

COMMENT ON 49 CFR § 395.13 (C)(2)

The birth of 395.13 in its present form came out of those old rules initially governing local drivers who strayed outside of their 100-mile allowed radius. Even in those days, to have shut down a local driver for 8 hours for not having a logbook was awfully extreme.

Today, the present rule is a mish-mash of spaghetti law repugnant to minimal safeguards. No thoughts are given to due process. No remedies are stated. No presumptions of innocence at all is even considered. FHWA steps way beyond its statutory authorities under 49 USC § 521(B)(5) by calling for fixed-time shutdowns; an authority never granted by Congress, therefore, an authority that FHWA cannot have extended legally to its agents or states. 521(B)(5) authorizes out of service orders for reasons of imminent hazard, only, and said authority cannot extend beyond that necessary to abate the hazard (repeated in CFR 386.72).

The presumption, though, found in 395.13 is that of guilt:

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that a driver found without a logbook "may" be in violation of the hours of service rules and may therefore have to be brought into compliance. True! A driver "may" be in violation of an hours of service rule, and he may be in violation of such rule with or without a logbook. But then, a driver "may also" be responsible for the disappearance of Jimmy Hoffa, but is that mere presumption enough to get him executed?

A driver in violation of the hours of service rules (10 hours, for instance) is considered to represent an imminent hazard to public safety and can therefore be declared out of service until that hazard is abated and that driver is brought back into compliance with the rules (which just "happens" to be 8 hours!) The eight hours time limit is incidental to the shutdown. It only lives as a remedy contained within the 10 and 15 hour rules. It has no substantive life of its own. It is not a penalty, it is a corrective measure designed to restore administrative order. It cannot be imposed on a driver for failing to wear a seat belt, for accidentally misplacing his medical card, or for carrying the family pet along on a trip as an unauthorized passenger. FHWA has no authority to grant states the power to shutdown a driver for violating that state's speed limits, for misspelling something in the logbook and having it called falsification of logs, or even using it against a driver for hours of service violations found days and weeks apart, in other states. Each of those illustrations were found to be wielded recently against drivers by the state of Arkansas wherein thousands of drivers were declared out of service under 395.13, or under some other "imagined" authority. And all thanks to FHWA's lack of written standards on the matter. Only by

the most talented stretch of the imagination can one find "imminent hazard" in those parts of the rules.

And one must stretch his talented imagination even further to suggest that a record-keeping infringement is linked somehow to a violation of the 10 or 15 hour rule. One doesn't necessarily have anything to do with the other. Since an administrative inspection is "analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not" (See UNITED STATES V MORTON SALT CO, (1950) 338 US 632, 94 L.Ed 401, 70 S.Ct 357) the inspector is bound by the standards of a compliance inspection and not a criminal one wherein he lashes out at a driver with extreme 8-hour penalties amounting to defacto sentences for merely violating a record-keeping provision. There must be a period of time given for that driver to go and get a logbook, or bring himself into compliance in some other acceptable manner. If further investigation reveals the driver to be in violation of the hours of service rules, then declare that driver out of service. But not before!

Even if a case of "imminent hazard" shutdowns under 395.13 could be made (by some greater stretch of the imagination), even if a case for FHWA's practice of setting fixed-time shutdowns under 395.13 could be made and justified, as a minimum, the rules must then allow an opportunity for a driver to bring himself into compliance. As a minimum, 395.13 should read that "a driver found without a logbook can be declared out of service for a maximum of 8 hours, or until such time as he gets a logbook! (emphasis and

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11

personal text added).

But then, I think FHWA has known all about this little inconsistency in 395.13, and has known it all along.

COMMENTS ON QUESTIONABLE STATE AUTHORITIES

FHWA needs to include standards in MCSAP agreements spelling out precisely the conduct it allows its agent inspectors at roadside inspection sites, and its standards to guide its inspectors in their selection of establishments or equipment under FHWA's authority under 49 USC § 504(C), which itself lacks written standards involving selections and omits any mention entirely of the frequency and scope of when searches may be made. Such omissions grant broad and excessive discretionary power to the inspectors, and purports to authorize inspections without warrant or consent. Courts have been quick to strike down those administrative inspection laws that allow inspections "at any time" of the day or night. Since FHWA's authority under 504(C) allows only those inspections "allowed by law" this permits the states to fire at will, to circumvent any requirements to offer proper advance notices of inspections. Many states still have "at any time" laws still on the books.

DONOVAN V DEWEY, 452 US at 603, supra, held that to satisfy the certainty and regularity requirement, the inspection program must define clearly what is to be searched, who can be searched, and the frequency of such searches.

BIONIC AUTO PARTS V FAHNER, 721 F2 at 1080 (1983) approved warrantless searches that minimize the intrusiveness of the search under WAYNE CONSUMANO INC V BLOCK, 692 F2 1025 (5th cir.1982)

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At present, by DOT's approvals of a state's motor carrier codes allowing inspections "at any time" (i.e. Arkansas Motor Carrier Code, 23-13-255), a driver logged "off-duty" or "sleeper berth" could conceivably be pounced upon at 3 a.m. in a rest area, roused from a sound sleep, and subjected to a rigorous safety inspection (something that has happened a lot already in this industry).

IN SUMMARY

The Administrative Procedures Act affords the right of an inspector to make a random, warrantless search without subpoena, cause, or permission, but, in turn, allows the other party to make a timely objection to the search by demanding an agency subpoena in writing, or its equivalent.

If an objection ensues, it is the courts that are empowered to enforce the subpoena (whether an oral or written subpoena) not the inspector in the field by his imposing coercive penalties upon drivers such as shutdowns.

The driver is entitled to a formal "written" request of the item or items to be searched if he is expected to participate in the inspection when such participation could lead to his prosecution. (Items considered to be custodial cannot lead to prosecution as the driver cannot attest to their validity, therefore, such items can be required verbally. Still, if a driver refuses to comply, it is up to the courts to enforce that verbal subpoena.)

DOT should issue rules of procedures governing subpoena requests and their contents. They should define clearly who should

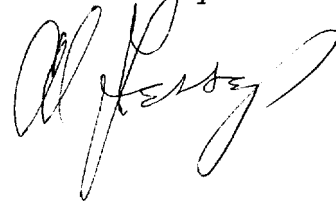
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be searched, what can be searched, and the frequency of such searches.

And lastly, DOT should reject state codes that allow searches and inspections to be made intrusively "at any time."

Thank you for your kindest consideration.

Sincerely

A handwritten signature in cursive script, appearing to read "Al Perry".

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December 29, 1996
Happy New Year

Docket Clerk
Attn: FHWA Docket No. MC-96-28
Federal Highway Administration
Department of Transportation
Room 4232
400 Seventh Street, SW.
Washington, D-C 20590

96 JAN 7 AIO: 46
LEGS./REGS. DIV.
FEDERAL HIGHWAY
ADMINISTRATION

Friends:

Several weeks ago I sent you some thoughts regarding plans before the FHWA regarding some revisions pertaining to truck drivers. Here are several additional consideration.

It seems to me that in order for the FHWA to do an adequate job, it would be a good idea to go into the field and check with real drivers. There are a number of large truck stops with several hours of Washington, D.C. Frederick and Elkton, Maryland would be good starters. Go into the Philadelphia area, to Paulsboro, or Bordentown, New Jersey. Drop down to Richmond, Virginia. Since drivers from across the country visit these places, it wouldn't be necessary to put your people in truck stops in every state. I'm sure that no matter where a trucker might be interviewed, the stories will be the same. It would even be a good idea for FHWA people to spend a week or two on the road, living with a driver, experiencing the way things truly are and not just the way some people believe they are. Sleeping in the sleeper, drinking countless cups of coffee, on and off the phone, driving with little sleep, etc.

Apparently there are some problems in the American trucking industry. Consider this: enclosed is a copy of a publication, pages of which lists over 100 employers looking for drivers. If truck driving is such a wonderful job, why is it that there are so many vacancies? It may well be that the reality of the job doesn't match up with the expectations. The positions are painted as high paying, etc. This makes them very attractive until it realized that in order to earn the high pay, a person must work 24 hours a day and often sidestep the law. When this reality hits home, other wise good drivers, take a hike. Such a high rate of turnover tends to put inexperienced drivers behind the wheel. In turn, these tend to have more accidents.

There isn't, in my opinion, any drivers shortage, but a shortage of persons willing to work under these considerations. This is a serious problem because, to a large degree, American depends on trucking. With only a few exceptions, every thing moves on a truck.

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[SEE SUPPLEMENTAL FILE FOR ATTACHMENT (PUBLICATION)]

Regarding the ads, the FHWA researchers will be hard put to find any other industry which has spurred a number of similar publications, all looking for drivers.

Continued good luck in your work. Hopefully the FHWA will be able to construct a workable plan, one which increases highway safety.

Sincerely,

Dan Schobert

Dan Schobert

Box 558

Plover, Wisconsin 54467

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To Whom It May Concern:

I just read an article in the paper here about the ANPRM, on the Hours-of-Service transition, and that you would like comments on this matter.

Well I am not a scientist, but if I followed the rules as they are now I would be dead, how about some Common-Sense, what I mean is I am human, and most humans sleep from 10:00 PM to 6:00 AM, most of the time I drive till 2:00 AM and start again the next day, ok lets say I get up at noon and can only drive 2hrs for the day because of the 70hr rule, so now what am I supposed to do go back to sleep it don't work that way and you know it, I would be more tired if I stayed up untill Mid-Night and then drove, and make no mistake the company is going to have an 8:00 AM appt. time so you can legally be there.

I can only hope this^{time} with all the data that is recieved, that you people will be more Humane, because what is in place now is one of the most inhumane ways of handling this problem.

Michael P. Riley
Box 274
South Sioux City, NE
68976

Sincerely,
Michael P. Riley
Michael P. Riley

ADMINISTRATION

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LEGISLATIVE DIV.

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